

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

JAMES J. MYRICK,

Plaintiff

v.

**The UNITED STATES DEPARTMENT OF
DEFENSE and the UNITED STATES
AIR FORCE,**

Defendants

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COMPLAINT

Plaintiff James J. Myrick, by and through his attorneys, brings this action against Defendants, the United States Department of Defense and the United States Air Force, to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"). As grounds therefor, Plaintiff alleges as follows:

PARTIES

1. Plaintiff is a citizen of the United States and the State of Illinois, residing at 748 Greenwood Avenue, Glencoe, Illinois 60022, within the Northern District of Illinois.
2. Defendant United States Department of Defense is an agency of the United States Government and is headquartered at the Pentagon, Washington, DC 20530-0001.
3. The United States Air Force is a Department within the US Department of Defense headquartered at the Pentagon, Washington, DC 20530-0001.

JURISDICTION AND VENUE

4. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.
5. Venue is proper in this District pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §

1391(e) because Plaintiff resides in this District.

STATEMENT OF FACTS

6. On or about May 31, 2013, Plaintiff sent a FOIA request to Defendant United States Air Force by email ("*Request*") addressed to the following email addresses: afmc.foia@wpafb.af.mil; afprogram@afsbirsttr.net; david.sikora@wpafb.af.mil; and Shirley.Schmieder@eglin.af.mil. The Request is attached hereto as Exhibit A.

7. Plaintiff copied himself on the Request, which confirmation email he received the same day Plaintiff sent the Request.

8. Plaintiff mailed additional copies of the Request ("*Additional Requests*") from the United States Post Office in Glencoe, Illinois to both Defendants by certified mail to the following addresses:

Office of Freedom of Information
1155 Defense Pentagon
Washington, DC 20301-1155

HQ AFMC/A6OS (FOIA)
4225 Logistics Avenue
Room A-108
Wright-Patterson AFB, OH 45433

A copy of the Additional Requests are attached hereto as Exhibit B.

9. Plaintiff included copies of his Illinois drivers license and US passport with the Additional Requests to prove his identity and to satisfy any requirements of the United States Privacy Act, 5 U.S.C. §552a, that may apply to the documents requested pursuant to the Request and the Additional Requests (a copy of Plaintiff's drivers license and passport are not included in Exhibit B).

10. Plaintiff received certified mail receipts forms delivered by the US Postal Service, confirming delivery of the Additional Requests to the Department of Defense at the above-

identified address on June 14, 2013, and to the United States Air Force at the above-identified address on June 13, 2013. Copies of the delivery confirmations are attached hereto as Exhibit C.

11. Pursuant to 5 U.S.C. § 552(a)(6)(A), Defendant United States Air Force was required to respond to the Request, and both Defendants were required to respond to the Additional Requests, within twenty (20) working days from receipt of the Request and Additional Requests, respectively, and Defendants failed to do so.

12. As of the date of this Complaint, Defendants have failed to: (i) produce any records responsive to the request; (ii) demonstrate that responsive records are exempt from production; or (iii) notify the Plaintiff that unusual circumstances exist so as to allow the Defendants additional time to respond to the Request and the Additional Requests. In short, Defendants have failed to respond to the Request or the Additional Request in any manner.

13. Because Defendant failed to comply with the time limits set forth in 5 U.S.C. § 552(a)(6)(A), Plaintiff is deemed to have exhausted any and all administrative remedies with respect to the Request and Additional Requests, pursuant to 5 U.S.C. § 552(a)(6)(C).

COUNT 1

(Violation of FOIA, 5 U.S.C. § 552)

14. Plaintiff realleges paragraphs 1 through 13 as if fully stated herein.

15. Defendant failure to provide the records responsive to the Request and the Additional Requests, or to either demonstrate that responsive records are exempt from production or to notify the Plaintiff that unusual circumstances exist so as to allow the Defendants additional time to respond to the Request and the Additional Requests violates 5 U.S.C. § 552.

16. Plaintiff is being irreparably harmed by reason of Defendants' unlawful withholding of the requested records, and Plaintiff will continue to be irreparably harmed unless Defendants

are compelled to conform its conduct to the requirements of the law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests for the Court to: (1) order Defendant to conduct a search for any and all records responsive to Plaintiff's Request and Additional Requests, and demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to the Request and Additional Requests; (2) order Defendant to produce, by a date certain, any and all non-exempt records responsive to the Request and Additional Requests, and a Vaughn index of any responsive records withheld under claim of exemption; (3) enjoin Defendant from continuing to withhold any and all non-exempt records responsive to Plaintiff's Request and Additional Requests; (4) grant Plaintiff an award of attorneys' fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and (5) grant Plaintiff such other relief as the Court deems just and proper.

Dated: July 23, 2013

Respectfully submitted,

PLAINTIFF, JAMES J. MYRICK

By: /s/ William M. Stevens
One of his attorneys

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